

**STATE OF NEW MEXICO  
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED AMENDMENTS TO  
20.2.2 NMAC - *DEFINITIONS* AND 20.2.73 NMAC - *NOTICE  
OF INTENT AND EMISSION INVENTORY REQUIREMENTS*,  
AND PROPOSED REGULATION 20.2.87 NMAC -  
*GREENHOUSE GAS EMISSIONS REPORTING***

**No. EIB 07-06(R)**

## DIRECT TESTIMONY OF LANY WEAVER

## I. INTRODUCTION

The Department proposes to adopt a new regulation and revise two (2) existing regulations to implement the greenhouse gas ("GHG") emissions reporting program in New Mexico:

- Revised 20.2.2 NMAC – *Definitions*.
- Revised 20.2.73 NMAC – *Notice of Intent and Emissions Inventory Requirements*, and
- New 20.2.87 NMAC – *Greenhouse Gas Emissions Reporting*

My testimony consists of four (4) parts: (1) a brief description of the Department's exhibits; (2) the broader context in which the proposed regulations were developed; (3) the Department's objectives in the proposed regulations; and (4) a section-by-section description of the proposed regulations.

The Department requests that the Environmental Improvement Board ("EIB") adopt the proposed regulations with an effective date of January 1, 2008 so that affected sources can begin collecting emissions data in calendar year 2008 for reporting in 2009.

1 The Department also requests that if the EIB adopts the proposed regulations, it authorize  
2 the Department, prior to filing, to correct typographical errors and make formatting  
3 changes requested by the State Records Center.

## 4 5 **II. EXHIBITS**

6 Before discussing the regulations, I will briefly review the exhibits supporting the  
7 Department's testimony.

8 Exhibits 1, 2, and 3 are the Department's proposed revisions to Parts 2 and 73 and  
9 proposed new regulation Part 87 which were published for public comment following the  
10 EIB's July 11, 2007 meeting. For Parts 2 and 73, the proposed revisions are indicated in  
11 strikeout and underline format. Part 87 did not contain similar formatting because it is a  
12 new regulation.

13 Exhibits 4 and 5 are the Department's proposed revisions to Parts 73 and 87  
14 reflecting changes in response to public comments as well as corrections identified by the  
15 Department upon further review of the regulations. These changes are identified in the  
16 Department's Notice of Intent to Present Technical Testimony, and are highlighted in  
17 yellow in attachments to that notice. The Department does not propose any additional  
18 changes to Part 2.

19 Exhibit 6 is Governor Richardson's Executive Order 2005-033, "Climate Change  
20 and Greenhouse Gas Reduction". Exhibit 7 is Governor Richardson's Executive Order  
21 2006-69, "New Mexico Climate Action." These executive orders, which provide the  
22 mandate for today's hearing, are referenced in Mr. Jim Norton's direct testimony.

1 Exhibit 8 is the recommendations of the Climate Change Advisory Group, which  
2 served as the starting point for the proposed regulations. These recommendations also  
3 are referenced in Mr. Norton's testimony.

4 Exhibit 9 describes the stakeholder process followed by the Department in  
5 developing the proposed regulations. The stakeholder process included:

- 6 ○ Thirteen (13) meetings (in-person and telephonic) to discuss concepts and  
7 draft language. Seven (7) of the meetings were sector-specific, e.g., oil  
8 and gas or electric generation. Additionally, the Department met with  
9 individual stakeholders to discuss the draft language.
- 10 ○ Twenty (20) or more electronic mail updates to advise interested persons  
11 of planned meetings and document availability; and
- 12 ○ A frequently-updated website with hyperlinks to draft regulations, meeting  
13 notes, and other information.

14 Exhibit 10 is the Department's draft emissions reporting schedule. Exhibit 11 is  
15 an example of the draft emissions calculation procedures. The Department requests that  
16 the Board authorize the further development of this schedule and procedures, rather than  
17 approve them directly. This approach allows the Department the flexibility necessary to  
18 keep the schedule and procedures current with developments in the area of GHG  
19 reporting without the need for repeated hearings. The EIB maintains oversight of the  
20 schedule and procedures by setting guidelines and criteria for the Department's exercise  
21 of this authority, and can request updates from the Department at any time.

1     **III.     BACKGROUND**

2             **A.     INTRODUCTION**

3             As Mr. Norton has explained, the proposed regulations were developed in the  
4     context of several state and regional efforts, including:

- 5             ○ The existing criteria pollutant emissions inventory program;
- 6             ○ The recommendations of the Climate Change Advisory Group;
- 7             ○ Existing and developing voluntary GHG registries; and
- 8             ○ Market-based GHG emissions reduction programs, such as the program  
9             being developed by the Western Regional Climate Action Initiative.

10  
11            **B.     EXISTING CRITERIA POLLUTANT INVENTORY PROGRAM**

12            The oldest program relating to the reporting of air pollutant emissions is the  
13     existing criteria pollutant emissions inventory in Part 73. The Department has been  
14     collecting this data for more than twenty-five (25) years. The existing inventory applies  
15     only to criteria pollutants, which are those air pollutants for which the federal government  
16     has established health-based ambient air quality standards pursuant to the Clean Air Act,  
17     or for which the EIB has established standards pursuant to the Air Quality Control Act.  
18     These pollutants are ozone, particulate matter, oxides of nitrogen, lead, carbon monoxide,  
19     oxides of sulfur, total reduced sulfur and hydrogen sulfide. The purpose of the inventory  
20     is to track the emissions of criteria pollutants to ensure compliance with ambient  
21     standards and to guide policy development. Some relevant facts concerning the  
22     inventory include:

- Reports are submitted annually for sources subject to 20.2.70 NMAC - *Operating Permits* (e.g., potential to emit greater than one hundred (100) tons per year of a criteria pollutant);
- Reports are submitted upon request for sources subject to 20.2.72 NMAC - Construction Permits (e.g., potential emission rate greater than ten (10) pounds per hour or twenty-five (25) tons per year of a criteria pollutant), and 20.2.73 NMAC - Notice of Intent and Emissions Inventory Requirements (e.g., potential emission rate greater than one (1) ton per year of lead or ten (10) tons per year of another criteria pollutant). The Department requests these reports every five (5) to ten (10) years;
- Reports are facility-specific and apply only to direct emissions of criteria pollutants;
- Reports must be certified as true and accurate; and
- Reports are public records.

### **C. CLIMATE CHANGE ADVISORY GROUP**

Governor Richardson's Climate Change Advisory Group ("CCAG") unanimously adopted Recommendations CC-1 and CC-2 that relate to GHG reporting and registries. Accordingly, the Governor's 2006 executive order accepting those recommendations requires the Environment Department to propose corresponding rules to the EIB.

- Recommendation CC-1 calls for the development of a mandatory New Mexico GHG reporting program, including the following design recommendations:

- 1                   ▪ Phased reporting by sectors as standardized quantification
- 2                   protocols become available;
- 3                   ▪ Annual reports for the six (6) Kyoto greenhouse gases [carbon
- 4                   dioxide, methane, nitrous oxide, hydrofluorocarbons (HFCs),
- 5                   perfluorocarbons (PFCs) and sulfur hexafluoride];
- 6                   ▪ Reports of direct emissions, with phased reports of indirect
- 7                   emissions from purchased power and heat; and
- 8                   ▪ Maximum consistency with federal, regional, and state GHG
- 9                   reporting programs.
- 10               ○ Recommendation CC-2 calls for the development of a GHG registry
- 11               and/or participation in the development of a regional GHG registry,
- 12               including the following design considerations:
- 13                   ▪ Statewide or broader geographical applicability;
- 14                   ▪ Registration and verification of past emissions to the extent
- 15                   supported by sound data; and
- 16                   ▪ Prohibition on double counting of emissions reductions by multiple
- 17                   registrants.

#### 19               **D.     VOLUNTARY GHG EMISSIONS REGISTRIES**

20               Voluntary GHG registries are being developed to enable progressive companies  
21               and organizations to document and track their emissions and reductions. The registries  
22               most pertinent to the proposed regulations are The Climate Registry ("TCR") and the  
23               California Climate Action Registry ("CCAR"). TCR is the broader effort, encompassing

thirty-nine (39) U.S. states and several Canadian provinces, but CCAR is the older and more developed registry. New Mexico is an active participant in TCR development. While some differences may develop as the TCR finalizes its program, the registries are expected to be similar in design and will satisfy the CCAG recommendations identified earlier, for instance:

- Reports will be submitted annually;
- Reports will be entity-wide;
- Reports will include direct, indirect, and motor vehicle emissions;
- Reports will be subjected to third-party verification pursuant to training and certification rules established by the registry; and
- Emissions summaries will be public record, but the actual data will be confidential.

#### **E. MARKET-BASED GHG EMISSIONS PROGRAMS**

New Mexico is actively involved in efforts to establish a market-based GHG emissions reduction program through the Western Regional Climate Action Initiative ("WCI"), as described previously by Mr. Norton. The purpose of this program is to reduce GHG emissions through mechanisms which encourage the use of the most cost-effective reduction strategies in the market. One example of a market-based mechanism is a cap-and-trade program, which works by capping GHG emissions at a set level and allowing trading of emission allocations and reductions under that cap. To work effectively, market-based mechanisms must have:

- a mechanism for tracking and verifying GHG emissions and reductions;

- a common, consistent currency;
- a comprehensive tracking system for accounting purposes; and
- a mechanism for ensuring that all GHG emissions within the program's boundaries are measured and reported accurately.

#### **IV. THE DEPARTMENT'S OBJECTIVES FOR PROPOSED REGULATIONS**

The Department's primary objective for the proposed regulations is to provide a reporting and registry mechanism that is consistent with the executive orders, recommendations, and programs which both Mr. Norton and I have now described. Additionally, the Department has designed the proposed regulations to achieve the following objectives:

- To collect New Mexico-specific GHG information to improve the state-wide inventory and provide a sound basis for policy development;
- To lay the groundwork for New Mexico to participate in the anticipated market-based GHG mechanism being developed by WCI; and
- To support New Mexico industry in complying with and taking advantage of economic opportunities afforded by the anticipated market-based GHG mechanism being developed by WCI.

I will explain each of these objectives in more detail.



1           **A.       IMPROVING THE STATE GREENHOUSE GAS INVENTORY**

2           Emissions inventories are important tools for the development of air quality  
3 policies and programs. For instance, emissions inventories provide useful information  
4 for determining:

- 5           ○ the source categories to include in reporting and permit programs;
- 6           ○ the sources for which reporting protocols must be developed.
- 7           ○ the sources requiring technology standards; and
- 8           ○ the sources to include in emissions reduction programs.

9           The most recent statewide GHG emissions inventory for New Mexico was  
10 developed in 2005 as part of the CCAG process. The estimates in this inventory were  
11 derived using a top-down approach in the absence of facility-specific information. For  
12 instance, the inventory estimated the emissions from some sectors by multiplying the  
13 total national emissions by New Mexico's percentage share of national activity, or by  
14 applying generalized emissions factors to rough estimates of state activity.

15          The proposed regulations are designed to refine the state inventory by obtaining  
16 detailed facility-specific information. Additionally, the Department intends to  
17 supplement this information with targeted studies, including surveys of sources not  
18 covered by the proposed regulations.

19

20           **B.       LAYING THE GROUNDWORK FOR A MARKET-BASED**  
21           **MECHANISM**

22  
23          The proposed regulations lay the groundwork for New Mexico to participate in  
24 anticipated market-based GHG mechanism being developed by WCI. Although these

1 regulations may require adjustment when WCI finalizes the mechanism, the Department  
2 believes that there are several advantages in adopting these regulations now:

- 3           ○ Governor Richardson has directed the state to adopt reporting and registry  
4           requirements;
- 5           ○ The improved emissions inventory will better inform New Mexico's  
6           participation in the WCI process;
- 7           ○ The early implementation of a mandatory GHG reporting program will  
8           allow the Department to "work out the bugs" and consider appropriate  
9           stakeholder feedback; and
- 10          ○ New Mexico industry can prepare for the WCI mechanism.

### 11 12           **C.       SUPPORTING NEW MEXICO INDUSTRY**

13           The climate for GHG regulation is changing as fast as the climate itself. The  
14 strong participation of stakeholders in the development of the proposed regulations, like  
15 the CCAG process itself, is a reflection of public awareness and concern for the issues  
16 posed by climate change.

17           A fundamental objective of the proposed regulations is to support New Mexico  
18 industry to position itself to comply with the mandates and to take advantage of the  
19 economic opportunities arising from the anticipated market-based GHG mechanism  
20 being developed by WCI. Early participation in a registry will allow industry to identify  
21 opportunities for emissions reductions and the corresponding risks associated with the  
22 expected mandatory limitations. This process is called "baseline protection." Many  
23 industries in New Mexico are eager to register their emissions and gain baseline

1 protection before they undertake emissions reductions which otherwise might not be  
2 credited.

3 To avoid redundancy and competition with the anticipated market-based GHG  
4 mechanism being developed by WCI, the proposed regulations do not establish a New  
5 Mexico-specific registry, nor do they require companies to register with either TCR or  
6 CCAR, because:

- 7 ○ The scope of the WCI mandate has not been established. Until the scope  
8 is established, we will not know which source categories are covered.

9 Although some companies may choose to voluntarily register their  
10 emissions with TCR or CCAR, because of the significant expense of this  
11 process, the Department believes that it would be premature to require all  
12 companies to do so;

- 13 ○ TCR and CCAR are not set up to address the issues arising with  
14 mandatory reporting programs, such as defining company boundaries to  
15 avoid miscounting of emissions. Those companies that currently register  
16 their emissions may have to reevaluate their emissions data when  
17 mandatory requirements are established under the WCI. The Department  
18 believes that requiring all companies to undergo this transition would  
19 cause undue confusion; and

- 20 ○ TCR is not yet operational, so as a practical matter, the EIB could not  
21 require companies to register their emissions with that program. While  
22 CCAR is operational, it is tailored to companies operating in the State of  
23 California, and there are indications that it may be merged into TCR in the

1 future. Given this uncertainty, the Department believes it is premature to  
2 mandate New Mexico industry to register their emissions with TCR or  
3 CCAR.

4 The Department's proposal charts a middle course that positions New Mexico to  
5 participate in the WCI market-based program to be announced in August 2008. The  
6 proposed revisions to Part 73 introduce New Mexico companies to GHG emissions  
7 reporting by employing existing criteria pollutant reporting practices. For those source  
8 categories most likely to be covered by the WCI market-based mechanism, proposed Part  
9 87 creates a bridge between historical criteria pollutant reporting and registries such as  
10 TCR and CCAR by combining the tools and calculation methods of the registries with the  
11 reporting boundaries and verification methods of traditional reporting. Additionally,  
12 proposed Part 87 offers these source categories the option of registering under TCR or  
13 CCAR instead of through Part 87.

14  
15 **V. PROPOSED REVISIONS TO 20.2.2 NMAC - DEFINITIONS**

16 The general purpose of Part 2 is to compile those definitions used in more than  
17 one air quality regulation to avoid the necessity of repeating them in each regulation. The  
18 Department employs this approach for the proposed regulations by adding seven (7) new  
19 definitions to Part 2. Specifically, the Department proposes to define "greenhouse gas"  
20 to include the six (6) compounds addressed under the Kyoto Protocol. These compounds  
21 are carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons and  
22 sulfur hexafluoride. Although it is known that additional compounds contribute to  
23 climate change, the Department's proposal is consistent with other GHG initiatives by

1 focusing on the most relevant anthropogenic (human-caused) compounds. Additionally,  
2 the Department proposes to define each of the GHG included in that definition. The  
3 source of these definitions is Webster's Third New International Dictionary Unabridged,  
4 1971.

5  
6 **VI. PROPOSED REVISIONS TO 20.2.73 NMAC - NOTICE OF INTENT AND**  
7 **EMISSIONS INVENTORY REQUIREMENTS**

8  
9 **A. INTRODUCTION**

10 Part 73 has two (2) purposes. First, Part 73 is designed to require sources that are  
11 potentially large enough to affect air quality, but not large enough to require a  
12 construction permit under Part 72, to notify the Department before they construct their  
13 facility. The Department does not propose any changes to this portion of the regulation.  
14 Second, Part 73 is designed to require sources subject to Parts 70 (Operating Permits), 72  
15 (Construction Permits), or 73 (Notices of Intent) to report their emissions of criteria  
16 pollutants. The Department does not propose any changes to this portion of the  
17 regulation except to expand the requirements to include GHG. I will now describe each  
18 section of Part 73 that must be revised to achieve this result.

19  
20 **B. OBJECTIVE**

21 Section 6 establishes the objective of the regulation. The Department proposes to  
22 amend the section by adding the phrase “and to facilitate the quantification of greenhouse  
23 gas emissions in New Mexico”. The language reflects the GHG emissions requirements  
24 being added in subsequent sections.

1 During the rulemaking process, it was proposed that the objective be written to  
2 preclude the Department from using the information collected through the GHG  
3 emissions inventory for any purpose other than improvement of the statewide inventory.  
4 In support, it was argued that the emissions inventory information would not have  
5 sufficient quality to support policy development. The Department opposes this limitation  
6 because it would prevent the state from using this information to guide policy  
7 development, and it disagrees with the assertion regarding data quality. The Department  
8 and EIB have relied on criteria pollutant inventory data for policy development, and there  
9 is no reason to believe that GHG data will be inadequate for that purpose. Moreover, to  
10 the extent that data quality is an issue, that argument can be raised in the context of any  
11 program whose justification relies solely on that data.

### 12 13 **C. DEFINITIONS**

14 Section 7 specifies the definitions, in addition to the GHG definitions in 20.2.2  
15 NMAC - *Definitions*, that are used in the regulation:

- 16 ○ California Climate Action Registry. The California Climate Action  
17 Registry was established by California statute as a non-profit voluntary  
18 registry for GHG emissions. The purpose of the Registry is to help  
19 companies and organizations to establish GHG emission baselines against  
20 which future GHG emission reductions may be applied.
- 21 ○ Fuel carbon content. Fuel carbon content is not required for criteria  
22 pollutant reports, but is relevant for calculating GHG emissions from the  
23 fuel combustion. This definition, which was developed in cooperation

1 with oil and gas representatives, reflects the preferred method of  
2 expressing carbon content in the EPA Climate Leaders Program.

- 3 ○ Greenhouse gas emissions reporting year. The Department proposes to  
4 define this term to avoid confusion. "Reporting year" means the year in  
5 which the emissions occurred, but without a definition, sources may  
6 believe it means the next year when the emissions are actually reported.
- 7 ○ The Climate Registry. The Department proposes to revise the definition  
8 of this term to avoid confusion with other institutions sharing this general  
9 description.

#### 11 **D. APPLICABILITY**

12 Section 300.A establishes the scope of the emissions inventory requirements.

13 Historically these requirements have applied to sources subject to Parts 70 (Operating  
14 Permits), 72 (Construction Permits), and 73 (Notices of Intent). The Department  
15 proposes to amend this section to require the reporting of GHG emissions by sources  
16 already subject to Part 73. During the rulemaking process, it was suggested that the  
17 scope of GHG reporting should be expanded to include smaller sources, and conversely,  
18 narrowed to apply only to larger sources. The Department disagrees with both  
19 suggestions for the following reasons:

- 20 ○ For sources already subject to the criteria pollutant inventory  
21 requirements, the addition of GHG reporting is less burdensome than  
22 requiring many smaller sources which are not familiar with the inventory  
23 process to begin reporting GHG only;

- There is extensive overlap between the sources that emit significant amounts of criteria pollutants and those that emit significant amounts of GHG. For instance, fossil fuel combustion is a significant source of criteria pollutants (carbon monoxide and oxides of nitrogen), as well as the most significant source of GHG (carbon dioxide);
- For sources not subject to the criteria pollutant inventory requirements, the Department has other means for collecting GHG data which are more accurate and less burdensome, such as estimating the emissions from area sources and fuel usage data; and
- The argument for excluding sources already subject to the criteria pollutant inventory requirements from GHG reporting is based on the notion that these sources do not emit significant amounts of GHG, but there is no evidence to support this notion. Moreover, to the extent that a source category does not emit significant amounts of GHG, the proposed regulation authorizes the Department to consider this factor when developing its request for GHG inventory data.

#### **E. REPORTING REQUIREMENTS**

Section 300.B establishes the reporting requirements for criteria pollutants. The Department proposes to add two (2) new paragraphs specifying the reporting requirements for GHG.

First, in Section 20.2.73.300.B(9), the Department proposes that sources can comply with the regulation by participating in TCR or CCAR, provided the Department



1 is given access to the registry data that would have been reported under the regulation.  
2 Alternatively, the Department proposes that sources can comply with the regulation by  
3 reporting GHG under Part 87 provided they comply with Part 87 for a minimum of three  
4 (3) years. The three year rule ensures that sources participate for the entire phase-in  
5 schedule under Part 87. Additionally, sources using this approach must retain their GHG  
6 data for no less than five (5) years. Finally, for sources not electing the TCR/CCAR or  
7 Part 87 approaches, the Department proposes to require GHG reports on a schedule  
8 established by the Department, but no more often than annually. This approach allows  
9 the Department to tailor the reporting requirements to address the most significant  
10 sources of GHG emissions.

11 Second, in Section 20.2.73.300.B(10) the Department proposes criteria for the  
12 development of reporting schedules and procedures for sources not electing the  
13 TCR/CCAR or Part 87 approaches. The Department's request for authority to establish  
14 reporting schedules and procedures for GHG reporting is fully consistent with the  
15 Department's existing authority to establish schedules and reporting procedures for  
16 criteria pollutants. This approach provides flexibility to update the reporting schedules  
17 and procedures to reflect new information and developments in GHG reporting without  
18 sacrificing public participation in the process. The Department's exercise of authority is  
19 constrained by the following criteria:

- 20 ○ The opportunity for public comment;
- 21 ○ Consideration of existing quantification standards and best practices for  
22 estimating GHG emissions. The rapid pace of development and  
23 improvement of standards and practices supports the need for flexibility.

1 In fact, the Department is actively engaged with stakeholders in  
2 developing standards and practices for quantifying emissions from oil and  
3 gas production and processing;

- 4 ○ Consideration of the relative contribution of different sources and source  
5 types, as well as the contribution of specific GHG from specific sources  
6 relative to the other emissions from that source or source type. Allowing  
7 the Department to focus on the most significant sources of GHG conserves  
8 administrative resources, particularly with respect to sources with small  
9 emissions requiring a significant effort to quantify.

10 The Department proposes to revise the language in 20.2.73.300.B(10)(c) to reflect  
11 comments received during the public comment period. Specifically, the Department  
12 proposes to substitute the word "minimal" for "insignificant" to avoid confusion with Part  
13 70 which contains an exception for "insignificant" emissions.

14 The Department proposes that GHG reports will be due on the same date (April 1)  
15 as the criteria pollutant reports, unless the source's operating permit specifies a different  
16 date. During the rulemaking process, some commenters suggested that the GHG report  
17 date should be changed to July 1. The Department believes that it promotes  
18 administrative efficiency to use the same date for both criteria pollutant and GHG reports.  
19 Additionally, the federal Environmental Protection Agency has indicated that it intends to  
20 issue guidance regarding the date for criteria pollutant reports. When that occurs, the  
21 Department will reevaluate its decision and propose a revision, if appropriate.

1           **F.       CONTENT OF EMISSIONS REPORTS**

2           The Department proposes two (2) changes in Section 300 regarding the content of  
3           emissions reports. First, the Department proposes to amend Section 300.C to clarify that  
4           the subsequent provisions apply only to criteria pollutant reports. Second, the  
5           Department proposes a new Section 300.G to specify the content of GHG reports. These  
6           requirements are similar to the requirements for criteria pollutant reports, such as the  
7           requirement that the owner or operator certify the completeness and accuracy of the  
8           report. However, GHG reports will differ in certain aspects:

- 9           ○ Sources may be allowed to combine reports or emissions points, for  
10           instance, similar engines at multiple facilities or similar emissions points  
11           at a single facility. This approach is appropriate for GHG but not criteria  
12           pollutants because GHG impacts are global, while criteria pollutant  
13           impacts are localized and must be compared to the applicable ambient air  
14           quality standards;
- 15           ○ GHG reports do not collect the metrics used in atmospheric dispersion  
16           modeling, which are only relevant for criteria pollutants, for the reason  
17           stated previously; and
- 18           ○ GHG reports collect information regarding fuels, such as carbon content,  
19           which is not relevant to criteria pollutants.

20  
21           **G.       DRAFT REPORTING SCHEDULE**

22           As I discussed earlier, the Department requests the authority to set report  
23           schedules consistent with specific criteria established by the regulation. To illustrate how

1 this authority might be exercised, the Department provides, for informational purposes  
2 only, a draft schedule for the next three (3) years. NMED Exhibit 10. The schedule  
3 includes sources reporting under both Parts 73 and 87. The schedule is not final, and may  
4 change in response to the EIB's recommendations and public comments. Key elements  
5 of the draft schedule include:

- 6 ○ Major sources (e.g., potential to emit greater than one hundred (100) tons  
7 per year of a criteria pollutant) would begin to report direct emissions of  
8 carbon dioxide from combustion sources and vented carbon dioxide (e.g.,  
9 carbon dioxide stripped from natural gas and vented at processing plants)  
10 in calendar year 2008, and minor sources (e.g., potential emission rate  
11 greater than ten (10) pounds per hour or twenty-five (25) tons per year of a  
12 criteria pollutant) would report these emissions in calendar year 2009; and  
13 ○ Major sources would report direct emissions of the six (6) GHG in  
14 calendar years 2010 and beyond.

15  
16 **VII. PROPOSED NEW REGULATION 20.2.87 NMAC - GREENHOUSE GAS**  
17 **EMISSIONS REPORTING**

18  
19 **A. INTRODUCTION**

20 Proposed 20.2.87 NMAC – *GHG Emissions Reporting* is designed to provide a  
21 bridge to GHG registries such as TCR and CCAR by:

- 22 ○ Introducing sources to the registry process without the cost of third party  
23 verification;
- 24 ○ Allowing sources to use an online reporting tool similar to CCAR and  
25 anticipated at TCR;

- Allowing the transfer of data to CCAR and TCR when sources register with one of them; and
- Encouraging registration with CCAR and TCR by allowing sources to meet their obligations under Part 87 by registering with one of them.

## **B. STANDARD REGULATORY LANGUAGE**

The Department proposes the standard provisions used in all air quality regulations for Sections 1 (Issuing Agency), 4 (Duration), 7 (Severability), 8 (Construction), 10 (Savings Clause), and 11 (Compliance with Other Regulations).

## **C. SCOPE**

In Section 2, the Department proposes to define the scope of the regulation as "[a]ll persons who own or operate an applicable source of greenhouse gas emissions in the geographic areas within the jurisdiction of the Environmental Improvement Board." This definition excludes Bernalillo County and Tribal Lands. The phrase "applicable source of greenhouse gas emissions" means a source that is required to report under the part.

## **D. STATUTORY AUTHORITY**

Section 3 specifies the EIB's statutory authority to adopt regulations requiring GHG reporting.

- Greenhouse gases are "air contaminant[s]". The Act, §74-2-2(A), defines "air contaminant" as "a substance, including any particulate matter, fly

1 ash, dust, fumes gas, mist, smoke, vapor, micro-organisms, radioactive  
2 material, any combination thereof or any decay or reaction product  
3 thereof." This definition is broad enough to include GHG..

4 ○ The EIB may adopt regulations to prevent or abate air pollution. The Act,  
5 §74-2-5(B)(1), authorizes the EIB to adopt regulations to "prevent or abate  
6 air pollution...within the geographic area of [its] jurisdiction." GHG  
7 emissions constitute air pollution which the EIB may prevent or abate by  
8 adopting regulations.

9 ○ The EIB has general authority to require GHG reporting. The EIB's  
10 general authority to prevent and abate air pollution authorizes the adoption  
11 of requirements for GHG reporting and registry in order for the state to  
12 develop reduction strategies.

13 ○ The EIB has specific authority to require GHG reporting. The Act, §74-2-  
14 5(C)(5), authorizes the EIB to "require any person emitting any air  
15 contaminant to ...(c) establish and maintain records of the nature and  
16 amount of emissions; (d) submit reports regarding the nature and amounts  
17 of emissions and the performance of emission control devices; and (e)  
18 provide any other reasonable information relating to the emission of air  
19 contaminants."

1           **E.       EFFECTIVE DATE**

2           In Section 5, the Department proposes an effective date of January 1, 2008, in  
3           order to require sources to report data for emissions in calendar year 2008. Data would  
4           be collected starting January 1, 2008, and reported in 2009.

6           **F.       OBJECTIVE**

7           In Section 6, the Department proposes to state the objective of Part 87 as "to  
8           establish requirements for the annual reporting of greenhouse gas emissions to the  
9           department using tools and procedures similar to those used by greenhouse gas  
10          registries."

12          **G.       DEFINITIONS**

13          In Section 7, the Department proposes the following definitions for terms used in  
14          the regulation:

- 15           ○ California Climate Action Registry. This is the same definition proposed  
16           in Part 73.
- 17           ○ Carbon Dioxide Equivalent. This term represents a method for comparing  
18           the impacts of different GHG. It is calculated by multiplying the quantity  
19           of a GHG by a conversion factor. For carbon dioxide, the conversion  
20           factor is defined as one. For methane, the conversion factor is defined as  
21           21 (Kyoto Protocol) or 25 (for a one hundred year horizon) (Inter-  
22           governmental Panel on Climate Change Assessment Report). The

1 definition requires the Department to specify the applicable conversion  
2 factor for each reporting year.

- 3 ○ Direct Emissions and Indirect Emissions. Direct emissions are emitted at  
4 the facility owned or operated by the reporting entity. Indirect emissions  
5 are emitted as a result of actions at the facility owned or operated by the  
6 reporting entity, but which occurred elsewhere, such as emissions created  
7 to produce electricity used by the facility.
- 8 ○ Emissions Report or Inventory. This term is taken from Part 73 and used  
9 here for purposes of consistency.
- 10 ○ Facility. This term, which is derived from and consistent with the term  
11 "source" used in Parts 70 and 72, defines the physical boundaries of the  
12 installation subject to the regulation.
- 13 ○ Metric Ton. This term provides the conversion factor between the units  
14 used in GHG programs and existing air quality permit programs which use  
15 English tons.
- 16 ○ Equity Share and Operational Control. These terms, which are used to  
17 determine the party responsible for GHG reporting, were developed in  
18 cooperation with stakeholders.
- 19 ○ Reporting Year. As in Part 73, this term means the year in which the  
20 emissions occurred. Reports of those emissions would be submitted in the  
21 following year.
- 22 ○ The Climate Registry. This is the same definition proposed in Part 73, as  
23 clarified for the reasons stated earlier.



1           **H.     APPLICABILITY**

2           In Section 200, the Department proposes to require three (3) source categories to  
3 report GHG emissions:

- 4           ○ Electrical generators with capacity greater than twenty-five (25)  
5           megawatts;
- 6           ○ Petroleum refineries; and
- 7           ○ Cement manufacturing plants.

8           The Department believes that it is reasonable to begin with these source  
9 categories because they emit significant amounts of GHG, and because generally  
10 acceptable reporting protocols are available. As more protocols are developed, the  
11 Department intends to propose more source categories for inclusion in Part 87. For  
12 instance, the Department anticipates the development of a protocol for the oil and gas  
13 sector in the near future. This source category should be included in Part 87 at that time  
14 because it is second only to electricity generation in GHG emissions in New Mexico.

15          Section 200 allows sources to voluntarily report GHG emissions under part 87  
16 rather than report under Part 73. This approach allows sources to use the online reporting  
17 tool. Additionally, Section 200 allows sources to voluntarily report GHG emissions not  
18 otherwise required by Part 87, such as emissions on Tribal Lands or in other states. Like  
19 Part 73, Section 200 allows sources to meet their obligation under Part 87 by registering  
20 GHG emissions under TCR or CCAR, provided the Department is allowed access to the  
21 reported information. However, sources that elect to report under TCR or CCAR will be  
22 required to report GHG emissions for all facilities, not just specific facilities as required  
23 by Part 87.

1 Finally, the Department proposes to correct internal references contained in the  
2 regulation released for public comment.

3

#### 4 **I. REPORTING REQUIREMENTS**

5 Section 201 specifies the GHG reporting requirements. These requirements apply  
6 to the source categories identified in Section 200, as well as any sources that elect to  
7 report under Part 87 rather than Part 73. Reporting requirements include:

- 8 ○ During the first year, direct emissions of carbon dioxide must be reported,  
9 except emissions from motor vehicles and non-road vehicles. Carbon  
10 dioxide represents the majority of emissions from the source categories  
11 identified in Section 200;
- 12 ○ During the second year, indirect GHG emissions from electricity, steam  
13 and heat purchased and consumed at the facility also must be reported;  
14 and;
- 15 ○ During the third and subsequent years, all direct GHG emissions, except  
16 emissions from motor vehicles and non-road vehicles, must be reported.

17 Finally, the Department proposes to correct internal references contained in the  
18 regulation released for public comment.

19

#### 20 **J. REPORTING PROCEDURES**

21 In Section 202, the Department proposes criteria to guide its development of the  
22 reporting tool and procedures for GHG emissions under Part 87. As in Part 73, the

1 Department believes that it is important for this process to be flexible in order to update  
2 the tool and procedures without undue delay. These criteria ensure that:

- 3           ○ The reporting tool will be consistent with the procedures;
- 4           ○ The public has no less than sixty (60) days to comment on the procedures  
5           prior to the beginning of the reporting year. In practice, this requirement  
6           means that the procedures for the reporting year 2008 must be available  
7           for public comment no later than the end of October 2007. This deadline  
8           does not apply to the reporting tool which will not be needed until later in  
9           the reporting year. Accordingly, the Department has contracted with  
10          CCAR to develop the reporting tool for public review by mid-2008 and  
11          finalization by the end of 2008;
- 12          ○ The procedures and reporting tool will be consistent to the extent feasible  
13          with the emissions calculation methods and best practices used by TCR  
14          and CCAR;
- 15          ○ The procedures and reporting tool will include recommended methods for  
16          quantifying GHG emissions, including conversion factors and the  
17          supporting data required, as well as alternative methods if available and  
18          appropriate. The Department proposes to revise the original language to  
19          add the phrase "and appropriate" because some alternative methods may  
20          not accurately quantify GHG emissions. The Department will specify  
21          whether alternative methods are appropriate when it releases the draft  
22          procedures for public comment;

- The reporting tool and procedures will provide, as appropriate, reduced reporting requirements for emissions that collectively account for less than five (5) percent of the facility's total emissions. This de minimis threshold is consistent with TCR, although CCAR uses a lower threshold of three (3) percent. The threshold is consistent with the approach in Part 73 which allows reduced reporting for "minimal" emissions;
- The requirement that the owner or operator of a facility certify that the information is true and accurate. This is consistent with Part 73, as well as the permitting programs; and
- The reporting tool and procedures must require certain information, such as company identification, emissions information, and supporting calculations.

Finally, Section 202 requires reports to be submitted by July 1 following the end of the reporting year.

#### **VIII. DRAFT REPORT SCHEDULE AND PROCEDURES**

Under both Parts 73 and 87, the Department is required to establish report procedures, and under Part 73 the Department is required to establish report schedules. For informational purposes only, the Department provides a draft reporting schedule for GHG reporting and an example of a procedure for the information to be reported by a major source in calendar year 2008. NMED Exhibits 10 and 11. As mentioned earlier, in October 2007, the Department intends to publish the report schedules and procedures for all source categories reporting in calendar year 2008.

1    **IX.    CONCLUSION**

2            The Department respectfully requests that the EIB adopt the proposed regulations.  
3    The regulations support broader efforts in the state and region to regulate GHG. By  
4    adopting the regulations with an effective date of January 1, 2008 or earlier, the reporting  
5    requirements can be applied to emissions in calendar year 2008.